



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/152970

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$532.35 for the period of February 3, 2013 – February 28, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On October 4, 2012, the agency issued a Notice of Child Care Eligibility to the Petitioner informing her that her child care benefits would continue beginning October 1, 2012. Petitioner was authorized for an enrollment based authorization for MT for 35 hours/week from October 7, 2012 – March 2, 2013. The agency issued payments to [REDACTED] for MT for the period of February 3, 2013 – February 28, 2013 in the amount of \$532.35.
3. Petitioner was employed at [REDACTED] from December 27, 2011 – December 21, 2012. On December 22, 2012, Petitioner was placed on family leave. An employer verification form from Brown indicates employment from December 27, 2011 – January 31, 2013 and rehire on May 28, 2013.
4. On January 2, 2013, Petitioner was placed on bed rest by her physician for 2 – 3 months.
5. Petitioner was placed in a W-2 Employability Plan from January 3, 2013 – March 31, 2013.
6. On January 31, 2013, Petitioner signed a child care acknowledgement form with the W-2 agency verifying that child care was not needed.
7. On February 4, 2013, the agency issued Child Care Authorization Information informing her that she was approved for an enrollment based authorization for one child for 5 hours/week from February 17, 2013 – April 6, 2013.
8. On February 19, 2013, Petitioner contacted the agency. Petitioner reported that she is not requesting child care benefits at this time though she has continued to send her child to child care.
9. On June 7, 2013, Petitioner's employer verified that she returned to work on May 28, 2013.
10. On October 16, 2013, the agency issued a Child Care Client Overpayment Notice and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$532.35 for the period of February 3 – 28, 2013 due to Petitioner's failure to report change in work hours and change in employment.
11. On October 21, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code §DCF 12.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code §DCF 12.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

There is no argument that petitioner was not working or in W-2 activities during the period in question. The Petitioner was on bed rest and unable to work. Though she was enrolled in W-2, she was not actively participating in W-2 activities due to her medical condition.

The Petitioner testified that her daughter was enrolled in the SDC Head Start program at [REDACTED] so she believed that she could continue to send her daughter to daycare as part of that program for half-days. She was not aware that the agency continued to pay Jo's as part of the Wisconsin Shares program. If the Petitioner was no longer working and no longer needed the child care authorization from the Wisconsin Shares program, she was required to notify the child care agency so that eligibility could be reviewed and the authorizations terminated if no longer eligible. Even if the Petitioner's child was entitled to continue to attend daycare as part of the Head Start program, she was required to notify the child care agency that the Wisconsin Shares authorization was no longer needed. Because the Petitioner did not notify the agency until February 15, 2013 that her employment ended, the agency continued to pay the daycare provider for the enrollment based authorization.

I reviewed the payment issuance history and conclude that the agency properly seeks to recover an overissuance of child care benefits to the Petitioner in the amount of \$532.35 for the period of February 3 – 28, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits to the Petitioner in the amount of \$532.35 for the period of February 3 – 28, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 4, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud